

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

SAT 55 of 2024

Sri Swapan Kumar Das

-Versus-

Smt. Sipra Koley & Anr.

For the Appellant : **Mr. Ayan Banerjee,**
Mr. Suman Banerjee.

Delivered on : **23.12.2024**

Prasenjit Biswas, J:-

- 1.** Both the Courts below have decided the case against this appellant.
- 2.** The suit was instituted by the plaintiff for ejectment and mesne profit against the defendant in respect of suit property which is a shop room. It is said by the plaintiff that the defendant has been occupying the shop room as a tenant for monthly rental of Rs. 88/- payable according to English calendar

month. The defendant stopped to pay the monthly rent since the month of April 2012 and also damaged the suit premises by keeping it under lock and key for a long time. Moreover, the said shop room is required by the plaintiff as his son intends to start a business therein. A notice of ejectment was sent to the defendant by the plaintiff by registered post with acknowledgment due card on 25.08.2024 asking the defendant to quit and vacate the suit premises by the last day of October, 2014. The defendant accepted the notice on 19.09.2014 despite that he did not quit and vacate the suit premises. As such the suit was instituted by the plaintiff against the defendant for eviction.

3. The defendant entered appearance in this case and contested the same by taking plea that the suit is not maintainable as the suit premises is governed by the provision of the West Bengal Premises Tenancy Act by the notification dated 19.09.2008 issued by the State Government wherein the suit mouza i.e. Gobindopur is said to be governed by the West Bengal Premises Tenancy Act. The another stand point of the defendant is that there is a tenancy agreement in between them wherein it was agreed between the parties that he was inducted as a tenant in the suit premises forever and the heirs of the plaintiff would not be capable of evicting him from the suit premises except on the ground if he would be unable to pay rent for consecutive three months only then he shall be evicted from the suit premises. It is said by the defendant that the terms of the agreement have to be followed and the plaintiff has no right to file the suit for eviction against him.

4. The another point which was taken by the defendant that the notice of eviction which was sent to him was erroneous wherein defendant was directed to vacate the suit premises by the end of September, 2014 the notice sent by the plaintiff was received by him on 19.09.2014 and as such requisite time for evicting the suit premises as enumerated in Section 106 of the Transfer of Property Act was not given to him. For that reason the notice sent to him by the plaintiff is erroneous.

5. The suit shop room is admittedly situated under the mouza Gobindopur and the area on which the suit shop room situates is under the panchayat area. Although the defendant claims that the suit premises is governed by the provision of the West Bengal Premises Tenancy Act by extended notification issued by the State Government but no such notification was filed before the Court. In support of his contention plaintiff filed panchayat tax receipts before the Trial Court which were marked as Exhibits 4 which indicate that the suit premises is situated within the gram panchayat area. The defendant also filed panchayat tax receipt which was marked as Exhibit C indicating that the suit mouza is situated within the pancayat area. So, it can be said that the provision of the West Bengal Premises Tenancy Act has not been extended to the area where the suit property situates. As such the suit for eviction under the Transfer of Property Act is quite maintainable.

6. The another stand point of the defendant is that there is an agreement in between both the parties wherein his tenancy in the suit premises would be treated as a perpetual tenancy and thus the plaintiff or his heirs had no right

to evict him from the suit premises. The said agreement was marked as Exhibit 11 in the case whereby terms of the said agreement show that the plaintiff was agreed to induct defendant as a tenant in the suit premises for perpetuity but there is a term which indicates that the plaintiff or his heirs are empowered to evict the defendant from the suit premises on the ground of default of payment of rent for a continuous period of three months. Section 107 of the Transfer of Property Act stipulates that a lease for a term exceeding one year can be made only by a registered instrument. The Exhibit 11 is an unregistered lease deed and as per provision of Section 107 it cannot be looked into and cannot be said that a perpetual lease was created by that document. From the said agreement (Exhibit 11) it can be said that the monthly lease is terminable by 15 days notice as per Section 106 of the Transfer of Property Act.

7. It is said by the defendant that the notice of eviction is erroneous. The notice of ejectment was sent by the plaintiff by registered post with A/D on 25.08.2014 asking the defendant to quit and vacate the suit premises by the last day of October, 2014 and the same was received by the defendant on 19.09.2014. Notice was received by the defendant by putting his signature on the A/D card. Exhibit 7/1 shows that the notice was sent to the defendant on 19.09.2014 and in the said notice defendant was directed to vacate the suit premises on the last day of October, 2014.

8. Sub-Section 3 of Section 106 of the Transfer of Property Act says that a notice under sub-Section 1 shall not be deemed to be erroneous merely because the period mentioned therein falls short of the period specified under

that sub-Section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-Section. The defendant took stand that he has not been given the requisite time for vacating the suit premises in the notice as per Section 106 of the Transfer of Property Act. Exhibit 6 clearly shows that notice of eviction was duly received by the defendant on 29.09.2014 and the instant suit was filed by the plaintiff on 01.12.2024 i.e. after lapse of 15 days from the date when notice of eviction was received by the appellant. We are not unmindful about the proposition of law that a land lord is entitled to eject the tenant after giving him notice to quit unless the tenant can prove that he has a right to remain on the land permanently and in that case onus is strictly upon the tenant to prove that permanent tenancy. We have already held that the defendant has failed to prove the perpetuity of the lease, So, the point remains that the notice given to the defendant is to be elaborately construed wherein he was asked to vacate and quit the suit premises.

9. Since the defendant failed to show that he is a tenant under the plaintiff under the provisions of the West Bengal Premises Tenancy Act and he is a tenant of perpetuity, so, it can be safely held that he is a monthly lessee under the plaintiff and he is liable to be evicted from the suit premises by the notice of eviction sent by the plaintiff. In this case notice of eviction has been duly served and proved by the appellant.

10. We, thus, do not find any merit in the instant appeal nor involvement of any substantial question of law. Accordingly, the appeal is dismissed.

11. There shall, however, be no order as to costs.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)